

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 206

Introduced by Schilz, 47.

Read first time January 13, 2015

Committee:

- 1 A BILL FOR AN ACT relating to the Erosion and Sediment Control Act; to
2 amend sections 2-4603, 2-4604, 2-4605, 2-4608, 2-4610, 2-4612, and
3 2-4613, Reissue Revised Statutes of Nebraska; to define and redefine
4 terms; to change provisions relating to the state erosion and
5 sediment control program; to provide for an order to cease and
6 desist as prescribed; to eliminate certain exemptions as prescribed;
7 to harmonize provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-4603, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 2-4603 For purposes of the Erosion and Sediment Control Act, unless
4 the context otherwise requires:

5 (1) Commission ~~shall mean~~ means the Nebraska Natural Resources
6 Commission;

7 (2) Conservation agreement ~~shall mean~~ means an agreement between the
8 owner or operator of a farm unit and the district in which the owner or
9 operator agrees to implement a farm unit conservation plan or, with the
10 approval of the district within which the farm unit is located, a portion
11 of a farm unit conservation plan. The agreement shall include a schedule
12 for implementation and may be conditioned on the district or other public
13 entity furnishing technical, planning, or financial assistance in the
14 establishment of the soil and water conservation practices necessary to
15 implement the plan or a portion of the plan;

16 (3) Director ~~shall mean~~ means the Director of Natural Resources;

17 (4) District ~~shall mean~~ means a natural resources district;

18 (5) Erosion or sediment control practice ~~shall mean:~~ means:

19 (a) The construction or installation and maintenance of permanent
20 structures or devices necessary to carry, to a suitable outlet away from
21 any building site, any commercial or industrial development, or any
22 publicly or privately owned recreational or service facility not served
23 by a central storm sewer system, any water which would otherwise cause
24 erosion in excess of the applicable soil-loss ~~limit~~ tolerance level and
25 which does not carry or constitute sewage or industrial or other waste;

26 (b) The employment of temporary devices or structures, temporary
27 seeding, fiber mats, plastic, straw, diversions, silt fences, sediment
28 traps, or other measures adequate either to prevent erosion in excess of
29 the applicable soil-loss ~~limit~~ tolerance level or to prevent excessive
30 downstream sedimentation from land which is the site of or is directly
31 affected by any nonagricultural land-disturbing activity; or

1 (c) The establishment and maintenance of vegetation upon the right-
2 of-way of any completed portion of any public street, road, or highway or
3 the construction or installation thereon of permanent structures or
4 devices or other measures adequate to prevent erosion of the right-of-way
5 in excess of the applicable soil-loss ~~limit~~; tolerance level;

6 (6) Excess erosion means the occurrence of erosion in excess of the
7 applicable soil-loss tolerance level which causes or contributes to an
8 accumulation of sediment upon the lands of any other person to the
9 detriment or damage of such other person;

10 ~~(6)-(7)~~ Farm unit conservation plan ~~shall mean~~ means a plan jointly
11 developed by the owner and, if appropriate, the operator of a farm unit
12 and the district within which the farm unit is located based upon the
13 determined conservation needs for the farm unit and identifying the soil
14 and water conservation practices which may be expected to prevent soil
15 loss by erosion from that farm unit in excess of the applicable soil-loss
16 ~~limit.~~ tolerance level. The plan may also, if practicable, identify
17 alternative practices by which such objective may be attained;

18 ~~(7)-(8)~~ Nonagricultural land-disturbing activity ~~shall mean~~ means a
19 land change, including, but not limited to, tilling, clearing, grading,
20 excavating, transporting, or filling land, which may result in soil
21 erosion from wind or water and the movement of sediment and sediment-
22 related pollutants into the waters of the state or onto lands in the
23 state but ~~shall~~ does not include the following:

24 (a) Activities related directly to the production of agricultural,
25 horticultural, or silvicultural crops, including, but not limited to,
26 tilling, planting, or harvesting of such crops;

27 (b) Installation of aboveground public utility lines and
28 connections, fenceposts, sign posts, telephone poles, electric poles, and
29 other kinds of posts or poles;

30 (c) Emergency work to protect life or property; and

31 (d) Activities related to the construction of housing, industrial,

1 and commercial developments on sites under two acres in size;

2 ~~(8)~~ (9) Person shall mean means any individual, partnership, limited
3 liability company, firm, association, joint venture, public or private
4 corporation, trust, estate, commission, board, institution, utility,
5 cooperative, municipality or other political subdivision of this state,
6 interstate body, or other legal entity;

7 ~~(9)~~ (10) Soil and water conservation practice shall mean means a
8 practice which serves to prevent erosion of soil by wind or water in
9 excess of the applicable soil-loss ~~limit~~ tolerance level from land used
10 only for agricultural, horticultural, or silvicultural purposes. Soil and
11 water conservation practice shall ~~include, but not be~~ includes, but is
12 not limited to:

13 (a) Permanent soil and water conservation practice, including the
14 planting of perennial grasses, legumes, shrubs, or trees, the
15 establishment of grassed waterways, the construction of terraces, and
16 other permanent soil and water practices approved by the district; and

17 (b) Temporary soil and water conservation practice, including the
18 planting of annual or biennial crops, use of strip-cropping, contour
19 planting, minimum or mulch tillage, and other cultural practices approved
20 by the district; and

21 ~~(10)~~ (11) Soil-loss ~~limit~~ shall mean tolerance level means the
22 maximum amount of soil loss due to erosion by wind or water, expressed in
23 terms of tons per acre per year, which is determined to be acceptable in
24 accordance with the Erosion and Sediment Control Act. Soil loss may be
25 impacted by water erosion which may include (a) sheet and rill erosion
26 which includes relatively uniform soil loss across the entire field slope
27 which may leave small channels located at regular intervals across the
28 slope and (b) ephemeral gully erosion which occurs in well-defined
29 depressions or natural drainageways where concentrated overland flow
30 results in the convergence of rills forming deeper and wider channels.

31 Sec. 2. Section 2-4604, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 2-4604 (1) The director shall, in cooperation with the commission,
3 the Department of Environmental Quality, the Natural Resources
4 Conservation Service of the United States Department of Agriculture, and
5 other appropriate state and federal agencies, develop and coordinate a
6 comprehensive state erosion and sediment control program designed to
7 reduce soil erosion in this state to tolerable levels. The program, which
8 shall be reasonable and attainable, shall include:

9 (a) The soil-loss ~~limits~~ tolerance level for the various types of
10 soils in the state;

11 (b) State goals and a state strategy for reducing soil losses on all
12 lands in the state to an amount no more than the applicable soil-loss
13 ~~limit;~~ tolerance level;

14 (c) Guidelines for establishing priorities for implementation of the
15 program at the state and local levels;

16 (d) Types of assistance to be provided by the state to districts,
17 cities, and counties in the implementation of the state and local erosion
18 and sediment control programs; and

19 (e) Such other elements as the director deems appropriate in
20 accordance with the objectives of the Erosion and Sediment Control Act,
21 including any recommendations for further legislative or administrative
22 action.

23 ~~(2) The state erosion and sediment control program shall be subject~~
24 ~~to the approval of the commission. It shall be presented to the Governor~~
25 ~~and the Legislature no later than January 1, 1987. The state erosion and~~
26 ~~sediment control program may be revised by the director and the~~
27 ~~commission at any time. Before approving the final program, any such~~
28 ~~changes,~~ the director and the commission shall conduct at least four
29 public hearings or meetings to receive information from interested
30 persons in different parts of the state.

31 ~~(3) The state erosion and sediment control program may be revised by~~

1 ~~the director and the commission at any time, except that such revisions~~
2 ~~shall be made according to the procedures required for approval of the~~
3 ~~original program.~~

4 Sec. 3. Section 2-4605, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 2-4605 (1) Each district shall, with the approval of the director,
7 ~~and on or before July 1, 1987,~~ adopt a district program for
8 implementation of the state erosion and sediment control program. Each
9 district's program shall include the:

10 (a) Soil-loss ~~limits~~ tolerance levels for the various types of soils
11 in the district. The soil-loss ~~limits~~ tolerance levels shall be adopted
12 and promulgated as rules and regulations and may be more but not less
13 stringent than those adopted by the director. It is the intent of the
14 Legislature that no land within the state be assigned a soil-loss ~~limit~~
15 tolerance level that cannot reasonably be applied to such land;

16 (b) Recommended erosion or sediment control practices and soil and
17 water conservation practices which are suitable for controlling erosion
18 and sedimentation within the district; and

19 (c) Programs, procedures, and methods the district plans to adopt
20 and employ to implement the state erosion and sediment control program.
21 Each district may subsequently amend or modify the program as necessary,
22 subject to the approval of the director.

23 (2) The director with the advice and recommendation of the
24 commission shall review each district's program and all amendments
25 thereto and shall approve the program or amendments if the director
26 determines that the district's program is reasonable, attainable, and in
27 conformance with the state erosion and sediment control program.

28 Sec. 4. Section 2-4608, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 2-4608 (1) Except to the extent jurisdiction has been assumed by a
31 municipality or county in accordance with section 2-4606, the district

1 may inspect or cause to be inspected any land within the district upon
2 receipt of a written and signed complaint which alleges that soil erosion
3 is occurring in excess of the applicable soil-loss ~~limit.~~tolerance
4 level. Complaints shall be filed on a form provided by the director.
5 Complaints may be filed by any owner or operator of land being damaged by
6 sediment, by any state agency or political subdivision whose roads or
7 other public facilities are being damaged by sediment, by any state
8 agency or political subdivision with responsibility for water quality
9 maintenance if it is alleged that the soil erosion complained of is
10 adversely affecting water quality, or by a staff member or other agent of
11 the district authorized by the board of directors to file such
12 complaints. Inspections following receipt of a written and signed
13 complaint may be made only after notice to the owner and, if appropriate,
14 the operator of the land involved, and such person shall be given an
15 opportunity to accompany the inspector.

16 (2) The owner, the operator if appropriate, and the district may
17 agree to a plan and schedule for eliminating ~~excessive~~excess erosion on
18 and sedimentation from the land involved. Any such agreement may be
19 enforced in district court in the same manner as an administrative order
20 issued pursuant to the Erosion and Sediment Control Act. If no agreement
21 is reached, the findings of the inspection shall be presented to the
22 district board of directors and the owner and, if appropriate, the
23 operator of the land shall be given a reasonable opportunity to be heard
24 at a meeting of the board or, if requested, at a public hearing. If the
25 district finds that the alleged sediment damage is occurring and that
26 excess soil erosion is occurring on the land inspected, it shall issue an
27 administrative order to the owner of record and, if appropriate, to the
28 operator describing the land and stating as nearly as possible the extent
29 to which the soil erosion exceeds the applicable soil-loss ~~limit.~~
30 tolerance level. When the complained-of erosion is the result of
31 agricultural, horticultural, or silvicultural activities, the district

1 shall direct the owner and, if appropriate, the operator to bring the
2 land into conformance with the applicable soil-loss ~~limit.~~tolerance
3 level. When the complained-of erosion is the result of a nonagricultural
4 land-disturbing activity, the district may authorize the owner and, if
5 appropriate, the operator to either bring such land into conformance with
6 the soil-loss ~~limit.~~tolerance level or to prevent sediment resulting from
7 ~~excessive~~excess erosion from leaving such land.

8 (3) The district may specify, as applicable, alternative soil and
9 water conservation practices or erosion or sediment control practices
10 which the owner and, if appropriate, the operator may use to comply with
11 the administrative order. A copy of the administrative order shall be
12 delivered by either personal service or certified or registered mail to
13 each person to whom it is directed and shall:

14 (a) In the case of erosion occurring on the site of any
15 nonagricultural land-disturbing activity, state a reasonable time after
16 service or mailing of the order when the work necessary to establish or
17 maintain erosion or sediment control practices shall be commenced and the
18 time, not more than forty-five days after service or mailing of the
19 order, when the work shall be satisfactorily completed;

20 (b) In all other cases, state the time, not more than six months
21 after service or mailing of the order, the work needed to establish or
22 maintain the necessary soil and water conservation practices or permanent
23 erosion control practices shall be commenced and the time, not more than
24 one year after the service or mailing of the order, the work shall be
25 satisfactorily completed, unless the requirements of the order are
26 superseded by section 2-4610; and

27 (c) State any reasonable requirements regarding the operation,
28 utilization, and maintenance of the practices to be installed,
29 constructed, or applied.

30 (4) Following refusal of a landowner to discontinue an activity
31 causing erosion described in this section and to establish a plan and

1 schedule for eliminating excess erosion pursuant to subsection (2) of
2 this section, and if the immediate discontinuance of such activity is
3 necessary to reduce or eliminate damage to neighboring property, the
4 district may petition the district court for an order to the owner and,
5 if appropriate, the operator, to immediately cease and desist such
6 activity until excess erosion can be brought into conformance with the
7 soil-loss tolerance level or sediment resulting from excess erosion is
8 prevented from leaving the property.

9 ~~(4)-(5)~~ Upon failure to comply with the order, the owner or, if
10 appropriate, the operator shall be deemed in violation of the Erosion and
11 Sediment Control Act and subject to further actions as provided by such
12 act.

13 Sec. 5. Section 2-4610, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 2-4610 (1) Any person owning or operating private agricultural,
16 horticultural, or silvicultural lands who has a farm unit conservation
17 plan approved by the district and is implementing and maintaining the
18 plan in strict compliance with a conservation agreement or any person
19 whose normal agricultural, horticultural, and silvicultural practices are
20 in conformance with the applicable soil-loss ~~limit~~ tolerance level shall,
21 for purposes of such land, be deemed to be in compliance with the
22 requirements of the Erosion and Sediment Control Act and any approved
23 erosion and sediment control program.

24 ~~(2) If there is not available to any owner or operator at least~~
25 ~~ninety percent cost-sharing assistance for the installation of permanent~~
26 ~~soil and water conservation practices which are required in an approved~~
27 ~~farm unit conservation plan or are required to conform agricultural,~~
28 ~~horticultural, and silvicultural practices to the applicable soil-loss~~
29 ~~limit, any such owner or operator shall not be required to install such~~
30 ~~practices pursuant to the Erosion and Sediment Control Act until such~~
31 ~~cost-sharing assistance is made available, except that such owner or~~

1 ~~operator may agree to a cost-share rate of less than ninety percent. To~~
2 ~~be enforceable, any agreement providing for cost-sharing assistance at a~~
3 ~~rate of less than ninety percent shall include notice that the owner or~~
4 ~~operator may choose not to sign such agreement and that such choice will~~
5 ~~preserve the right to not less than ninety percent cost-sharing~~
6 ~~assistance before any permanent soil and water conservation practices can~~
7 ~~be required by the district. The owner or operator may be required to~~
8 ~~utilize temporary soil and water conservation practices in the interim to~~
9 ~~minimize soil erosion and sediment damage.~~

10 (3) ~~(2)~~ To prevent ~~excessive~~ excess erosion and sediment from
11 leaving the land due to any agricultural or nonagricultural land-
12 disturbing activity, cost-sharing assistance may be available from any
13 district. Such assistance may be used for any erosion or sediment control
14 practice. The lack of available cost-sharing assistance does not offset
15 the requirement that the owner and, if appropriate, the operator of such
16 land comply with the terms of an approved plan of compliance or an
17 administrative order.

18 Sec. 6. Section 2-4612, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 2-4612 The district shall petition the district court for a court
21 order requiring immediate compliance with ~~the~~ an administrative order
22 previously issued by the district if:

23 (1) The work necessary to comply with the administrative order is
24 not commenced on or before the date specified in such order or in any
25 supplementary orders subsequently issued unless, in the judgment of the
26 district, the failure to commence or complete the work as required by the
27 administrative order is due to factors beyond the control of the person
28 to whom such order is directed and the person can be relied upon to
29 commence and complete the necessary work at the earliest possible time;

30 (2) The work is not being performed with due diligence or is not
31 satisfactorily completed by the date specified in the administrative

1 order or the practices are not being operated, utilized, or maintained as
2 required;

3 (3) The work is not of a type or quality specified by the district
4 and, when completed, it will not or does not reduce soil erosion from
5 such land below the soil-loss ~~limit~~tolerance level or, to the extent
6 ~~excessive~~excess erosion is permitted by the district for a
7 nonagricultural land-disturbing activity, will not or does not prevent
8 sediment resulting from such ~~excessive~~excess erosion from leaving the
9 land involved; or

10 (4) The person to whom the administrative order is directed advises
11 the district that he or she does not intend to commence or complete such
12 work.

13 Sec. 7. Section 2-4613, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 2-4613 In the district court action, the burden of proof shall be
16 upon the district to show that soil erosion is occurring in excess of the
17 applicable soil-loss ~~limit~~tolerance level and that the landowner or
18 operator has not established or maintained soil and water conservation
19 practices or erosion or sediment control practices in compliance with the
20 district's erosion and sediment control program. Upon receiving
21 satisfactory proof, the court shall issue an order directing the owner or
22 operator to comply with the administrative order previously issued by the
23 district. The court may modify the administrative order if deemed
24 necessary. Notice of the court order shall be given by either personal
25 service or certified or registered mail to each person to whom the order
26 is directed, who may, within thirty days from the date of the court
27 order, appeal to the Court of Appeals. Any person who fails to comply
28 with the court order issued within the time specified in such order,
29 unless the order has been stayed pending an appeal, shall be deemed in
30 contempt of court and punished accordingly.

31 Sec. 8. Original sections 2-4603, 2-4604, 2-4605, 2-4608, 2-4610,

1 2-4612, and 2-4613, Reissue Revised Statutes of Nebraska, are repealed.